

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Judge Wiley Y. Daniel**

Civil Action No. 02-D-840 (PAC)

SHAUNN NEGLEY,

Plaintiff,

v.

BREADS OF THE WORLD MEDICAL PLAN, et al.,

Defendants.

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**ORDER AFFIRMING AND ADOPTING  
MAGISTRATE JUDGE'S RECOMMENDATION**

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THIS MATTER is before the Court in connection with Defendants' Motion for Summary Judgment filed February 10, 2003, and Plaintiff's Motion for Summary Judgment filed February 11, 2003. These motions seek summary judgment on Plaintiff's claim asserted under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1101 et seq.<sup>1</sup>

The ERISA claim arises from the fact that Plaintiff is HIV positive, and was diagnosed with this prior to his enrollment in the plan. Plaintiff asserts that Defendants failed to timely enroll him in the Breads of the World Medical Plan (hereinafter "the Plan"), thus resulting in the loss of significant benefits to Plaintiff. Specifically, Plaintiff alleges that if he had been timely enrolled in the Plan, he would have immediately been

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<sup>1</sup> Plaintiff's state law claims were dismissed under the doctrine of ERISA preemption by Order dated December 3, 2002. That Order affirmed and adopted Magistrate Judge Coan's Recommendation of November 5, 2002. The December 3, 2002 Order also affirmed and adopted a recommendation that Defendants' Motion to Strike Plaintiff's Demands for Compensatory, Extra Contractual and Consequential Damages and for Jury Trial be granted. Thus, these damages have been stricken from the case as well as the right to a jury trial.

entitled to benefits. Since he was not timely enrolled in the Plan, Plaintiff was subjected to an 18 month period excluding pre-existing conditions, whereby the Plan did not cover any of Plaintiff's substantial medical treatment.

The Complaint alleges that Defendants violated their responsibilities as the Plan Sponsor, Plan Administrator and/or as a Fiduciary within the meaning of § 502(a) of ERISA in the following ways: (1) failing to properly enroll Plaintiff in the Plan and/or submit the necessary documents within the deadlines required by the Plan; (2) failing to properly and correctly direct correspondence and/or other documents to Plaintiff; (3) failing to act promptly on Plaintiff's communications, including but not limited to the enrollment form and requests to be enrolled in the Plan; (4) failing to advise Plaintiff of applicable time restrictions and/or other pertinent terms of the Plan; (5) failing to act in Plaintiff's best interests under the circumstances; and (6) failing to exercise the degree of care required under the circumstances. Complaint, ¶ 22. As a result of the foregoing, Plaintiff alleges that he has been denied benefits due and owing under the Plan, and/or which he otherwise would have been provided under the Plan. Id., ¶ 23.

Defendants' motion asserts that summary judgment is proper because the actions of the Plan Administrator (herein referred to as "Panera") that are complained of by Plaintiff were ministerial functions that do not give rise to ERISA's fiduciary duty obligations. Defendants also assert that even assuming, *arguendo*, that mailing enrollment forms is a fiduciary duty, Panera did not breach that duty since enrollment forms were mailed to the address provided by Plaintiff. Summary judgment is also proper, according to Defendants, because Plaintiff's negligence caused the delay in his enrollment in the health plan, and Plaintiff breached his duty of self-protection. Finally,

it is argued by Defendants that the Complaint must be dismissed because Plaintiff failed to exhaust his administrative remedies.

Plaintiff's motion asserts that, as a matter of law, Panera is an ERISA fiduciary since it is the entity responsible for recognizing and advising him of pertinent deadlines, and that Panera violated its fiduciary obligations in failing to do so. More specifically, Plaintiff argues that Panera had two opportunities to enroll him with full insurance coverage (with no pre-existing condition exclusion) but failed to do so. The reason for Panera's mishandling of Plaintiff's enrollment is undisputed – Panera was unaware of the enrollment provisions of its Plan and how the provisions impacted the pre-existing condition exclusion. Plaintiff further argues that Panera violated its fiduciary duties in (1) misleading Plaintiff regarding the Plan's terms during the initial enrollment period; (2) violating its duty to correct and clarify the ambiguous information it provided to Plaintiff throughout the enrollment period; (3) failing to provide complete and accurate information and/or misinforming Plaintiff as to the terms of the Plan in response to Plaintiff's inquiry in September 2001; and (4) failing to disclose a copy of the Summary Plan Description to Plaintiff.

These motions were referred to Magistrate Judge Coan for a recommendation by Order of Reference dated July 8, 2003. A Recommendation was issued on May 27, 2003, which is incorporated herein by reference. See 28 U.S.C. § 636(b)(1), FED. R. CIV. P. 72(b), D.C.COLO.LCivR. 72.1(C)(3). Magistrate Judge recommends therein that Defendants' Motion for Summary Judgment be denied, and that Plaintiff's Motion for Summary Judgment be granted in part and denied in part.

Specifically, as to Plaintiff's Motion for Summary Judgment, Magistrate Judge Coan recommends that Panera's representative who was responsible for the alleged duties at issue, Melanie Wilson ("Wilson"), be found to be an ERISA fiduciary, and that summary judgment be granted on this issue. Recommendation, at 9-12. As to whether fiduciary duties were breached by Panera and Wilson, the magistrate judge finds that ERISA prohibits knowing misrepresentations about a plan and that there is a duty to disclose based on the information the plan administrator has. Id. at 13-16. She further finds, however, that the scope of the duty Wilson owed Plaintiff depends upon resolution of certain disputed material facts about what Wilson knew or should have known, and that summary judgment should be denied for all parties on whether Wilson breached fiduciary duties to inform and disclose under ERISA. Id. at 17-18. Magistrate Coan also recommends that Defendants' Motion for Summary Judgment be denied as to Defendants' argument that Plaintiff was responsible for his late enrollment in the Plan due to the same disputed material fact issues. Id. at 18.

As to whether ERISA mandates a fiduciary duty to inform upon an employee's request for information, i.e., Plaintiff's request in September, 2001, Magistrate Judge Coan recommends that summary be denied for all parties, because there are material facts in dispute about the scope of Wilson's duties, Wilson's knowledge, and what information she should have provided to Plaintiff. Id. at 18-19. Magistrate Judge Coan does recommend, however, that Plaintiff's motion be denied as to the argument that Panera violated a fiduciary duty to provide a Summary Plan Description, since Plaintiff was not entitled to same during the time frame he asserts. Id. at 19-20.

As to Defendants' argument that Plaintiff was negligent, the recommendation is to deny Defendants' summary judgment motion on this issue because the parties factually dispute whether Plaintiff was responsible for not receiving the insurance information packets. Id. at 20-21. As to the argument that Plaintiff failed to protect himself, the magistrate judge finds no basis to this theory in the law cited by Panera. Finally, Magistrate Judge Coan recommends that Defendants' motion be denied on the issue of exhaustion of administrative remedies because she finds that Plaintiff was not required to complete the Plan's administrative procedure with respect to his claim. Id. at 22-23.

I first address Defendants' objections to the Recommendation. These objections require a de novo determination as to those specified proposed findings or recommendations to which objection is made since the nature of the matter is dispositive. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1). I first note that Defendants object to the finding that Panera, through its representative Melanie Wilson, was a fiduciary, and the granting of Plaintiff's summary judgment motion on this issue. See Defs. Objections at 4, 11. Defendants provide no independent basis for this objection, only referring the Court back to the Defendants' briefs in connection with the summary judgment motions. Defendants also object to numerous factual findings, arguing that the Magistrate Judge disregarded the undisputed evidence, misinterpreted the Plan and its application by the insurance carrier, and/or relied on immaterial evidence.

Defendants also object to the denial of their summary judgment motion on the merits, focusing on five "critical matters which were overlooked" by the magistrate judge, as follows: (1) the absence of a duty to educate pre-enrollees; (2) the carrier's

imposition of an automatic 9 month preexisting condition exclusion (“PXCE”) rather than the discretionary 18 month exclusion (thus allegedly rendering flawed the Recommendation’s thesis that Defendants’ misconduct related to the failure to alert Plaintiff to file his enrollment forms within 31 days of hire triggering the 18 month exclusion); (3) Panera’s failure to explain the 31 day rule to Plaintiff was harmless since the carrier did not impose the 18 month PXCE and Plaintiff was responsible for not receiving the enrollment packet; (4) Panera’s alleged failure to explain the HIPAA 63 day gap rule to Plaintiff was based on misapplied facts; and (5) there was nothing Panera could do to benefit Plaintiff from his September 2001 request. Defendants conclude that this case exists only because of Plaintiff’s blunders of (1) furnishing Panera with a false mailing address; and (2) informing Panera of prior medical coverage only when it was too late to be of any value. Summary judgment should thus be granted in their favor.

Having reviewed the Recommendation, the parties’ positions in the summary judgment motions and the applicable case law, and having considered Defendants’ objections in their entirety, I agree with the recommendation that Panera (through Wilson) is an ERISA fiduciary for purposes of this case for the reasons stated in the Recommendation and incorporated herein. Accordingly, I affirm and adopt the recommendation to grant Plaintiff’s Motion for Summary Judgment on this issue. I also affirm and adopt the recommendation that Defendants’ summary judgment motion be denied. I agree with Magistrate Judge Coan that there are genuine issues of material fact that preclude summary judgment in this case, including: (1) interpretation of the Plan and its application in this case, including whether the 9 month PXCE was applied

instead of the 18 month PXCE; (2) the duties owned by Panera as the Plan Administrator; (3) the knowledge that Panera and Wilson had relevant to the Plan that impacted Panera's duties; and (4) Plaintiff's role in the issues that gave rise to this action. Finally, I affirm and adopt the factual findings made by Magistrate Judge Coan in her Recommendation on the summary judgment motions. These findings are, however, obviously not binding on Defendants for purposes of trial.

Finally, I address the recommendation that Plaintiff's motion for summary judgment be denied as to all issues other than the finding that Wilson was a fiduciary. Plaintiff did not file any objections to this recommendation. No objections having been filed, I am vested with discretion to review this recommendation "under any standard [I] deem[] appropriate." Summers v. Utah, 927 F.2d 1165, 1167 (10th Cir. 1991); see also Thomas v. Arn, 474 U.S. 140, 150 (1985) (stating that "[i]t does not appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings").

Nonetheless, I review the recommendation to "satisfy [my]self that there is no clear error on the face of the record."<sup>2</sup> See Fed. R. Civ. P. 72(b) Advisory Committee Notes. I find no clear error in the recommendation, since I agree with Magistrate Judge Coan that there are genuine issues of material fact that preclude summary judgment on Plaintiff's claim that Panera violated its fiduciary duties, including what the scope of the duties are, what knowledge that Panera had that would trigger a duty, and what

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<sup>2</sup> Note, this standard of review is something less than a "clearly erroneous or contrary to law" standard of review, Fed. R. Civ. P. 72(a), which in turn is less than a de novo review, Fed. R. Civ. P. 72(b).

information Panera was required to provide in light of same. I also agree with Magistrate Judge Coan's recommendation that Plaintiff's summary judgment motion be denied as to the argument that Plaintiff was entitled to the Summary Description Plan. Accordingly, I affirm and adopt the recommendation to deny Plaintiff's Motion for Summary Judgment on all issues other than the argument that Wilson, Panera's representative, is a fiduciary.

In conclusion, for the reasons stated above, it is

ORDERED that the Recommendation of May 27, 2003, is **AFFIRMED AND ADOPTED**. In accordance therewith, it is

ORDERED that Defendants' Motion for Summary Judgment Pursuant to Fed. R. Civ. P. 56 filed February 10, 2003, is **DENIED**. It is

FURTHER ORDERED that Plaintiff's Motion for Summary Judgment filed February 11, 2003, is **GRANTED IN PART AND DENIED IN PART**. It is **GRANTED** as to the argument that Panera, through its representative Melanie Wilson, is an ERISA fiduciary. It is **DENIED** in all other respects.

DATED this \_\_\_\_\_ day of August, 2003.

BY THE COURT:

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Wiley Y. Daniel  
U. S. District Judge



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 02-D-840

CERTIFICATE OF MAILING

I hereby certify that a copy of the above Order was mailed to the following on  
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Magistrate Judge Patricia A. Coan

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Deputy Clerk